

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **VICE CHAIRMAN DAVE GALLIK**, on March 23, 2005
at 3:20 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Alan Olson, Chairman (R)
Rep. Dave Gallik, Vice Chairman (D)
Rep. Robyn Driscoll (D)
Rep. Robin Hamilton (D)
Rep. Hal Jacobson (D)
Rep. Harry Klock (R)
Rep. Mark E. Noennig (R)
Rep. Diane Rice (R)
Rep. Wayne Stahl (R)
Rep. Karl Waitschies (R)

Members Excused: Rep. George G. Groesbeck (D)

Members Absent: Rep. Dennis Himmelberger, Vice Chairman (R)
Rep. John Parker (D)
Rep. Brady Wiseman (D)

Staff Present: Todd Everts, Legislative Branch
Lindsey Grovom, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 480, 3/14/2005; HB 778,
3/14/2005; HB 787, 3/14/2005; HB
800, 3/23/2005
Executive Action: HB 800 Table; HB 775 Table; HB 778
Table

HEARING ON SB 480

Opening Statement by Sponsor:

SEN. BRENT CROMLEY (D), SD 25, opened the hearing on **SB 480**, Eliminate coal severance tax in-state generation incentive rate. **EXHIBIT** (feh64a01)

Proponents: None

Opponents:

Jim Hockler, Executive Director, Montana Coal Council, finds it ironic that it's okay to go out and give incentives to the film industry and then give incentives so they can come in and watch us tilt the wind mills.

Informational Testimony:

Dave Ohler, Department of Revenue, agreed with Greg Petesh that there are some concerns in the statute as it stands today. This bill addresses those concerns by striking the language that the bill has eliminated.

(REPRESENTATIVES WISEMAN AND HIMMELBERGER entered the meeting).

Questions from Committee Members and Responses:

REP. WAITSCHIES asked the sponsor what would happen if the bill does not pass. **SEN. CROMLEY** thought there could be trouble if someone acted on the basis of the statute. Potentially, the State could lose millions of dollars if other operators were to say that they did not get the benefit of the statute and, therefore, the State could be required to refund a large amount of taxes.

REP. WAITSCHIES asked **SEN. CROMLEY** if there is any litigation in the works right now and whether any companies are taking advantage of this reduction in tax rates. **SEN. CROMLEY** replied not that he is aware of.

Closing by Sponsor:

The sponsor closed.

{Tape: 1; Side: A; Approx. Time Counter: 9 - 26}

HEARING ON HB 778

Opening Statement by Sponsor:

REP. JOHN MUSGROVE (D), HD 34, opened the hearing on **HB 778**, Montana Public Power Authority.

Proponents:

Don Judge, self, said that as a result of deregulation, Montanans have been paying in excess of \$54 million a year for the same energy that they have been consuming prior to the sale of the generation assets from Montana Power Company to Pennsylvania Power & Light (PP&L). This money is going out of Montana.

EXHIBIT(feh64a02)

{Tape: 1; Side: B; Approx. Time Counter: 2 - 9}

Tom Larson, self, said that an energy crisis has been looming on the horizon for several decades, and now is the time for Montana to take some decisive steps in order to provide affordable energy to its citizens. He asked for support of HB 778 to buy back the dams.

Patrick Judge, Montana Environmental Information Center (MEIC), stood in support of the bill, stating that it relies upon recapturing for Montana the full benefits of our low-cost, existing, hydroelectric facilities that do not create pollutants.

Gene Fenderson, Montana for Business and Labor Caucuses, stated that Montana will not be able to regulate the cost of electricity until it has control of the production. **Mr. Fenderson** went on to urge support of this bill, which he described as 'excellent.'

Tom Schneider, self, stated that had this authority existed in the middle nineties, along with the option of wiring facilities, things would have been different.

Opponents:

David Hoffman, PPL Montana, informed the Committee that this bill proposes to create a five-member power commission that would study hydroelectric facilities in Montana and choose those that would be in the best interest of the state to own. That would result in expensive, publicly funded litigation that could last years. **Mr. Hoffman** went on to say that Montanans should work to encourage additional investment in Montana. Instead, this

legislation threatens the sound businesses in the state and will force them to leave.

EXHIBIT (feh64a03)

(REP. GROESBECK entered the meeting.)

{Tape: 1; Side: B; Approx. Time Counter: 23.9 - 26}

Tom Ebzery, attorney, Avista Corporation in Spokane, in strong opposition to the bill, addressed what he saw as invalid concerns discussed by the proponents.

Don Allen, Western Environmental Trade Association, talked about the impacts that go out from this sort of legislation and suggested a proper burial be given to this bill.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 14}

Bud Clinch, Montana Coal Council, stated the members of the Montana Coal Council think the philosophy and policy in the body of House Bill 778 is inappropriate for government and a free enterprise country. It's for these reasons, and the message that this sends to people that contemplate investing millions of dollars in future generation plants in Montana, that they stand in opposition to the bill.

Webb Brown, Montana Chamber of Commerce, rose in opposition to the bill. He also said that Mary Whittinghill, Montana Taxpayers' Association, apologized that she could not be at the hearing. Ms. Whittinghill had concerns about the bonding and the evaluation of property taxes where the property(ies) have become public. Ms. Whittinghill will write a letter concerning this issue at a later time.

John Fitzpatrick, Northwestern Energy, focused his testimony on the financial aspects of the bill. He explained that if a business is selling power at 3.2 cents, which is well below market at the present time in the Northwest, its substantial equal is the price of power that is bought from Montana's government-owned hydroelectric facilities.

(REPRESENTATIVE PARKER entered the meeting.)

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

The sponsor closed.

{Tape: 2; Side: A; Approx. Time Counter: 14 - 29}

HEARING ON HB 787

Opening Statement by Sponsor:

REP. RICK MAEDJE (R), HD 2, opened the hearing on **HB 787**, which would create an open-roads program to maintain roads on Federal lands.

[EXHIBIT](#)(feh64a04)

[EXHIBIT](#)(feh64a05)

{Tape: 2; Side: B; Approx. Time Counter: 1 - 21}

Proponents:

Fred Hodgeboom, Montanans for Multiple Use, represents all types of users of public lands. His groups strives to educate the public and promote balanced and scientific management of public resources. The transportation network is absolutely essential for most of the recreation in the National Forest.

Jason Toddhunter, Montana Logging Association, supports HB 787 and explained how forest roads are an important infrastructure component for timber harvesting communities. Keeping those roads open and intact will help treatment as far as forest insect disease, fire fighting, and other aspects that support the timber industry.

Rhonda Carpenter-Wiggers, Montana Snowmobile Association, stated the counties are in dire need of money to maintain these roads. She said there are a lot of organizations out there who are willing to give volunteer hours.

Brad Molnar, Montana Families for Outdoor Recreation, emphasized that it is a sad day when bake sales have to be held to maintain the roads when there are billions of dollars worth of funds available. This bill allows people to put their money where their mouth is.

Kerry White, Citizens for Balanced Use, gave some information on the Gallatin and mentioned the travel plan amendment that they're going through which proposes closing 70% percent of the trails to motorized use, partially because of the lack of trail funds.

There are \$1.8 million acres in the Gallatin National Forest; and last year they received \$250,000 in trail maintenance funds. There are 946 miles of motorized roads and 950 of non-motorized roads. This totals 2,000 miles, and they have one man to maintain it all. **Mr. White** urged the committee to provide the opportunity for people to be able to donate money to keep the trails open.

Gary Hall, Montanans for Multiple Use, believes HB 787 will help keep roads open for public use, as well as provide management of the public lands. This bill also enhances public input into road management.

Don Allen, Western Environmental Trade Association, stood in support of the bill.

Doug Abelin, Montana Trail Vehicle Riders Association, said this source of money will give the agencies the ability to leverage funds that they can't normally access because they don't have matching funds.

[EXHIBIT \(feh64a06\)](#)

Opponents:

Jim Kropp, Fish, Wildlife and Parks, believes repair and maintenance of federally owned roads is a Federal Government responsibility, but questions whether utilizing Fish, Wildlife and Parks license agents to sell open road decals is the appropriate venue.

[EXHIBIT \(feh64a07\)](#)

{Tape: 2; Side: B; Approx. Time Counter: 21 - 30}

Informational Testimony:

Terry Cheute, Forest Service, explained that there are about 32,500 miles of road in the National Forest system that is in Montana. Twenty-one thousand five hundred (21,500) of these are open to public and motorized travel. National forests in Montana receive about 20% of the funding needed to maintain roads at a level that meets the Highway Safety Act and environmental standards. Currently, there is an approximate \$558 million backlog in road maintenance in the national forest in Montana.

Tim Reardon, Department of Transportation, said the bill sets up a special account in the highway state special revenue. He suggested there might be a better way to establish this account, possibly to be administered by the Department of Transportation. There will be some start-up costs in order to fund this, and

there are no funding sources available. He suggested considering giving the nine-member commission some rule-making authority.

Jim McKeon, Department of Revenue, spoke on the check-off credit and provided facts. The Department of Revenue currently administers three check-offs on the income tax forms. The two-year average for these amounts to \$144,000.

Questions from Committee Members and Responses:

REP. DRISCOLL asked the sponsor how he addresses the funding issue for the decals. **REP. MAEDJE** replied that the fiscal note had just been provided and he hadn't had a chance to look at it. A suggestion was to wait until the tax write-off comes in for the first time and then partially fund it.

REP. GALLIK explained to the sponsor that this doesn't seem to keep the government from growing, it appears that there will have to be a whole new bureaucracy and unfunded mandates on those required to sell the decals. He asked how that would work when it isn't known how much money there is going to be to support this.

REP. MAEDJE replied that the licencing agents will get a fee, and he sees this as becoming popular with people making room for the selling of the decals.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 11.5}

REP. GALLIK followed up by asking **REP. MAEDJE** which department may retain three percent of the money. The sponsor replied that the Department of Transportation would receive three percent in order to administer the costs of the committee. **REP. GALLIK** went on to say that there are other groups that really do not want these roads open and what would happen if they came up with a bill similar to this one. **REP. MAEDJE** replied that they are more than welcome to open up funds as far as that's concerned to decommission roads; however, the cost of doing that is approximately twenty times more per foot as it is to build a road. Also, it is a very minute percentage of the population that would like to do this.

REP. GROESBECK asked Mr. Cheute if Montana did indeed have 32,000 miles of Federal roads right now. **Mr. Cheute** said that is correct and also verified the number of open roads as 21,500. **REP. GROESBECK** went on to ask Mr. Cheute to define what he meant by the \$558 million backlog. **Mr. Cheute** replied that his inventories have indicated that to bring the open road system up to those standards, just in the national forests of Montana, it would require \$558 million.

REP. GROESBECK had a question for Mr. Kropp as far as how much money is estimated to flow into the fund. **Mr. Kropp** answered that estimate calls for major speculation, and he is not sure. **REP. GROESBECK** followed up by wondering if it would not be more appropriate to go after a Federal appropriation rather than putting the burden on the licencing agents. **Mr. Kropp** said that is correct as it is very expensive to maintain these roads. He believes the Federal agencies should be responsible for the maintenance of these roads.

Closing by Sponsor:

The sponsor closed.

{Tape: 3; Side: A; Approx. Time Counter: 11.5 - 28}

HEARING ON HB 800

Opening Statement by Sponsor:

REP. MICHAEL LANGE (R), HD 55, opened the hearing on **HB 800**, which would revise laws related to default supply of electrical energy.

Proponents:

Brad Molnar, self, raised a question regarding the lack of a policy and what the procedure should be to ensure the lowest-cost energy for the people of Montana. Consideration must be given to the amount in duration of competing contracts defalsified with the stable suppliers. A look at the two contracts must happen to determine the lowest cost. There is only one entity requiring Montana to buy qualifying facility energy and that's the Federal government. If this part of the bill gets implemented, rates drop 25% in Montana.

EXHIBIT(feh64a08)

Opponents:

Patrick Judge, Montana Environmental Information Center, objected to this bill being scheduled the same day as it was introduced and run across first reading. He felt this bill was brought about late without much thought.

{Tape: 3; Side: B; Approx. Time Counter: 3 - 15}

John Fitzpatrick, Northwestern Energy, said the absolutely best thing that can happen to Montana consumers is when the Qualifying Facility projects, which are all unit contingent, are offline. When that happens, instead of buying power at \$80 a megawatt, they can go into the market and buy power at \$45 and save the consumer money.

Greg Jergeson, Public Service Commission (PSC), stated he was not representing PSC at this hearing due to scheduling reasons and opposed the bill.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. GALLIK asked Mr. Jergeson how long these appeals take, how much staff time is required and how many appeals go on to the District court. **Mr. Jergeson** replied that he wasn't sure.

REP. GALLIK asked the sponsor why this bill was being seen so late in the game, why they were tacking on \$500 just to make it a revenue bill as opposed to something that the sponsor's constituents talked to him about early on. **SEN. LANGE** responded by stating that it was seen early as it was the bill carried by **REP. ROY BROWN**. This request was placed before the session even started but, unfortunately, it took a long time to get the draft done.

Closing by Sponsor:

The sponsor closed.

(CHAIRMAN OLSON called for a recess until the floor adjourned).

{Tape: 4; Side: A; Approx. Time Counter: 1 - 25}

EXECUTIVE ACTION ON HB 800

Motion/Vote: **REP. HIMMELBERGER** moved that HB 800 DO PASS. Motion failed 1-13 by roll call vote with **REPRESENTATIVE HIMMELBERGER** voting aye and **REP. RICE, REP. DRISCOLL, REP. WAITSCHIES, AND REP. WISEMAN** voting no by proxy.

Substitute Motion/Vote: **REP. NOENNIG** made a substitute motion that HB 800 BE TABLED AND THE VOTE REVERSED. Motion carried.

EXECUTIVE ACTION ON HB 778

Motion: REP. STAHL moved that HB 778 DO PASS.

REP. STAHL withdrew his motion without objection.

EXECUTIVE ACTION ON HB 775

Motion: REP. STAHL moved that HB 775 DO PASS.

Motion: REP. HIMMELBERGER moved that HB 775 BE AMENDED.
[EXHIBIT](#) (feh64a09)

Discussion:

Todd Everts explained the amendment.

Vote: Motion carried unanimously by voice vote with
REPRESENTATIVES DRISCOLL, WISEMAN, RICE, AND WAITSCHIES voting
aye by proxy.

Motion: REP. STAHL moved that HB 775 DO PASS AS AMENDED.

Discussion:

REP. STAHL called everyone's attention to the fiscal note, and pointed out how this could, "put us over the cap." He also explained a possible funding gap between the time that they get the money until they have enough to update the system.

REP. HIMMELBERGER thinks that it's a, "...don't spend money that you don't have kind of a deal." No more money will go out than what has come in.

REP. KLOCK mentioned a phone call he received from the sheriff of Wheatland County. He was worried about Wheatland County and Golden Valley County getting any funding.

REP. GALLIK thought it was a great idea, but a little premature. He saw the bill as basically a tax on cell phone customers in order to fund something that is a good idea. He suggested waiting a couple years before making a decision.

REP. NOENNIG did not think the bill made economic sense. It is a very complicated process, and he was not sure of the answer, but he'd like to see this negotiated some more. He had decided to

vote for the bill and hoped the Senate could put some work into it.

REP. GROESBECK would like to see everyone on the same side of the table on this issue before it is voted on.

REP. JACOBSON thought he would go with **REP. NOENNIG** and vote for the bill and put faith in the Senate.

REP. HIMMELBERGER wasn't convinced that the other parties would work on this on their own, perhaps some direction needed to be offered.

(**REP. WISEMAN** entered the meeting)

REP. HAMILTON agreed with **REP. HIMMELBERGER** about the need to get folks together, and that the bill needs more work.

REP. WISEMAN mentioned that his district would immediately benefit from this bill, but on the other hand, the proposed fee seemed arbitrary. He believed that the problem is real, but he did not think HB 775 was the answer.

CHAIRMAN OLSON stated that the constituents in his district would be paying the fifty cents and getting no benefit. In this case, he was going to vote his district.

Vote: Motion failed 3-11 by roll call vote with **REPRESENTATIVES HIMMELBERGER, NOENNIG and JACOBSON** voting aye. **REP. RICE, REP. DRISCOLL and REP. WAITSCHIES** voted no by proxy.

Motion/Vote: **REP. OLSON** moved to **HAVE AN INTERIM COMMITTEE STUDY THE ISSUE**. Motion carried 13-1 by voice vote with **REP. GALLIK** voting no. **REP. DRISCOLL, REP. RICE and REP. WAITSCHIES** voted by proxy

{Tape: 4; Side: A; Approx. Time Counter: 25.5 - 29}

EXECUTIVE ACTION ON HB 778

Motion: **REP. STAHL** moved that **HB 778 DO PASS**.

Discussion:

REP. GALLIK stated that what is being talked about is public power and, if that is the case, there needs to be talk about both ends, generation as well as the transmission of it.

{Tape: 4; Side: B; Approx. Time Counter: 1 - 11}

REP. NOENNIG remarked that this is a difficult bill to vote for.

REP. HIMMELBERGER remarked how the public has weighed in on this bill.

REP. STAHL said his problem with the bill is that it would place hydroelectric facilities in a precarious position should drought conditions continue.

REP. GROESBECK said this is an issue where he would have to vote his district.

Vote: Motion failed 3-11 by roll call vote with **REP. GALLIK**, **REP. HAMILTON**, **REP. WISEMAN**, **REP. JACOBSON** voting aye. **REP. RICE**, **REP. DRISCOLL**, **REP. WAITSCHIES**, and **REP. PARKER** voted by proxy.

Motion: **REP. STAHL** moved that **HB 778 BE TABLED AND THE VOTE REVERSED**. Motion carried.

EXECUTIVE ACTION ON HB 775

Motion: **REP. STAHL** moved that **HB 775 BE TABLED AND THE VOTE REVERSED**. Motion carried.

HOUSE COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND
TELECOMMUNICATIONS

March 23, 2005

PAGE 13 of 13

ADJOURNMENT

Adjournment: 10:10 P.M.

REP. ALAN OLSON, Chairman

Lindsey Grovom, Secretary

AO/lg

Additional Exhibits:

EXHIBIT ([feh64aad0.TIF](#))